Licences for open access to scientific publications – a German perspective

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Abstract: Scientific research depends on easy and timely access to and use of existing scientific and scholarly research results, which in our times are mostly in digital form. Open Access promises to be a solution to this problem. To realise Open Access it is not enough to archive publications on a server. Rights have to be granted to the general public by applying licenses. The state and role of CCPL, DPPL, SCPL is discussed with respect to scientific publishing and research. What is also required to make Open Access successful is awareness of authors to which this article wants to contribute.

Keywords: Creative Commons, Open Access, Science Commons, scientific publishing – Germany

Introduction

The scholarly and scientific communication system is a crucial aspect of social benefit as it stands for scientific progress and information. However this system is in a state of severe crisis (cf. Boyd and Herkovic 1999, Parrot 2004, Kuhlen 2004). This information crisis has two contradictory aspects: on the one hand the "information overload" and on the other hand the "information enclosure". Even though the sum of the publications is ever growing due to the ease of producing, publishing and withdrawing information in the digital age, the access to and the use of digital publications is being more and more restricted by the privatization of scholarly and scientific information through copyright and patent law legislation. In Germany for instance the § 53 a UrhG will be cancelled to the end of 2006 (§ 137 k UrhG). Formerly intellectual property rights where the exception, now they are the rule.

Scientific research depends on easy and timely access to and use of existing scientific and scholarly research results that are mostly digital in our age. Open Access promises to be a solution to this problem by using the possibilities of improving the scientific and scholarly communication chain provided by electronic delivery methods. The *science commons* offers a solution for how open access to scientific publications can be gained. But first of all, what does open access mean to scientific publications and what is the role of the *science commons license*?

Open Access

The definition of "open access" is contained in the Budapest, Bethesda, and Berlin public statements. Even though they differ from one another in small ways, they agree on the essentials. The common ground is called the Budapest-Bethesda-Berlin or BBB definition of open access (cf. Suber 2004). Open access to scientific publications means the worldwide, cost free, immediate access to the full text of the

publication and the possibility to distribute and use it, and the deposition in at least one online repository using suitable technical standards.

Two models of how Open Access can be realised are proposed by the open access movement (cf. also Poynder 2005 with respect to the golden and the green road):

1. freely available electronic journals, and
2. author self-archiving of research papers on institutional or subject-based repositories

To realise Open Access means, to archive the publication and to grant rights to the general public. But how is it possible to grant the rights mentioned above?

Licenses

There exists a huge variety of open content licenses (cf. ifrOSS). To simplify open access by “standardisation” it would be helpful if the scientific community could agree on the use of a single License. But which one? Some of them are described briefly in the following.

1. Creative Commons Public License

Without doubt the most popular one is the Creative Commons Public License (cf. Creative Commons 2005a). Creative Commons was founded in 2001 at Stanford University (cf. Creative Commons 2005b). The aim of the released licenses is to build a layer of reasonable, flexible copyright into the increasingly restrictive default rules. The licenses are a tool to reduce barriers to creativity. Initially Creative Commons addressed "Cultural Creatives" (musicians, film-, photo- and image-makers) but not the artists of words. In other words the Creative Commons Public License was created for artists and not authors. But with its different modules authors can also express which rights they want to retain and so the licenses are also used for publications. In this context the specification "Attribution-no Commercial-no Derivatives" (cf. Creative Commons 2005c) is used most often. This confirms the results of the RoMEO study (cf. RoMEO Project) "How academics wish to protect their OA-research papers". The license was adopted in many countries; in Germany it has been available since June 2004 (cf. Dreier 2004).

2. Digital Peer Publishing License

In October 2003 the German Ministry of Science and Research of North-Rhine-Westphalia acted as initiator for the Open Access Initiative "Digital Peer Publishing NRW" which created the Digital Peer Publishing License (cf. DiPP), which was intended to encourage the foundation and expansion of scientific eJournals when the Creative Public License was not yet available. Up to now there exist 10 e-journals using the license. The DPPL was initially created for the authors of scientific publications with the goal of increasing the number of high-quality scientific publications as well as developing and establishing new methods of network-based cooperative information management, which will in turn enable high-speed, open, and transparent digital peer publishing in an appealing environment. In practice it doesn't differ very much from the CCPL. The only significant differences are in the specifications of retained rights but not in the application fields.

Table 1: Comparison of CCPL and DPPL

	CCPL	DPPL
Differences	Designed for creative content – 3 layer system – modular building block system – does not distinguish by carrier medium	Designed for scientific content – three different licences – distinguishes between electronic and analogue carriers
Obligations	Reference to license – no digital rights management (DRM) – no copyleft – credit to the author	Reference to license – retention of open access and credit to the author – history
Advantages	internationally networked – building block system – machine-readable metadata	Proximity to science – regional partners – changes can be restricted in scientifically specific manner
Disadvantages	Completely or not at all alterable – use cannot be restricted	Low degree of international linkage

Science Commons

Its specific application to the needs of the scientific communication distinguishes the Science Commons Project from the Creative Commons Project. Science Commons (cf. Science Commons 2005a) is an exploratory project to apply the philosophies and activities of Creative Commons in the realm of science. As an accomplishment of the Creative Commons Project it looks at the legal frictions that hinder reuse of scientific discoveries and might lead to discouraging innovation. The project focuses on patent rights and solutions to the increasing enclosure of in former times non protectable "raw facts" (for more information see Science Commons 2005b). The goal is to achieve the creation of a larger "Science Commons" built from private agreements, and technical standardization. The "some rights reserved" approach is adopted from Creative Commons, the parent organization. It is intended to support open access to scholarly research in a wide range of disciplines. Science Commons works in three project areas: Publishing, licensing, and data. This article focuses on publishing.

The process of scientific publication includes other applications of licences such as:

- Licenses to other publishers or journals;
- Licenses on Pre/postprints;
- Licenses for author self-archiving;
- Mechanisms for author self-archiving;
- Legal implications of Open Access business models;
- Application of machine-readable licenses to documents.

Here in addition to the Creative Commons licenses, the SCPL is generated. But as mentioned above, the Project started in early 2005 and is still at the beginning. Up to now drafts for licences don’t exist and groups therefore are being encouraged to use the Creative Commons standard licenses for the time being. The initial focus is more on technical approaches which make self-archiving easier, and on an education and outreach campaign so that both institutions and authors understand the importance of the issue. So far it is unclear at what date the SCPL will be available in the US, or when or if it will be adopted (like the CCPL) in European countries.

A brand new part of the Science Commons publishing project is the Open Access Law Program (for details see: http://sciencecommons.org/literature/oalaw), that supports “Open Access” to legal scholarship. The Open Access Law Program (OAL Program) consists of a set of resources to promote open access in legal publishing. These resources include:

- Open Access Law Journal Principles;
- Open Access Law Author Pledge;
- Open Access Model Publishing Agreement.

Unless the SCPL is available in Germany authors can (and should) use the Creative Commons Public License as well as the Digital Peer Publishing License (or both as they do not exclude each other) to grant rights and enable Open Access.

1. Practise of granting rights
The practice of granting rights with a Creative Commons License is very easy. To generate the License only two questions have to be answered (Allow commercial use? Allow Alteration?). The license gets generated in a HTML-Code, which can be simply inserted by copy and paste. The website of Creative Commons also provides a software application, the so called "CC Publisher" (cf. Creative Commons 2005c). It provides free hosting as well through the Internet Archive. The Science Commons Project is going to extend this tool to have it more scientifically driven, as the current interface was designed for cultural creators. Such a software doesn`t exist for the Corresponding DPPL. The license has to be inserted manual, which may hinder the broad use.

2. Author`s Addendum
But the technical problems are only one thing that has to be solved. Currently another big problem is the legal impossibility of granting rights imposed by the contract with the publisher. While some journal publishers already utilize author-friendly agreements, others do not. They still insist on transfer of all exclusive rights from the author, the so called "buy-out contracts", no matter whether there really is an intention of actually using these rights later on. Fortunately, many publishers will agree to changes in their standard agreement. The uncertainty of what and how to change such author agreements and mark up the publisher's standard agreements could be solved by the "Author's addendum" proposed by SPARC (SPARC 2005). It is a simple form that amends the "Publisher Agreement" and is attached to it. By using the SPARC Author's Addendum the author retains his right to make his article available in a non-commercial open digital archive on the Web. Up to now there exists only an English draft of this form, but SPARC Europe is about to publish the German version (for detailed information ask: bargheer@mail.sub.uni-goettingen.de).

Bottom line
Currently Open Access to scientific publications is achieved by archiving the publication and granting rights. To grant rights means to license the publication with an Open Content License. In most cases the Creative Commons Public License is used as it provides a good fit for academic research papers. In addition in Germany the Digital Peer Publishing License is used. The Science Commons License is not going to be an amendment of the Creative Commons License for scientific publications, but focuses on other areas of licenses. Up to now it is yet unclear, when

the licence is going to be available in the USA, or when or if it will be adopted in Germany. In the meantime the existing licenses should be (and are) used also for scientific publications. To enable the use of open content licenses by authors, the publisher agreements have to be amended. This can be realised by a standardised addendum as proposed by SPARC. But as it is within the capacity of the individual author to make his or her work openly accessible, the most important thing remains to inform the author. It is speculated that most of the authors do not make their work openly accessible because they are not informed. We need more education and outreach campaigns, so that both institutions and authors understand the importance of the issue.

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